

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DOMINION ENERGY BRAYTON )  
POINT, LLC, )

Plaintiff, )

vs. )

No. 04-12225 (RCL)

STEPHEN L. JOHNSON, )  
in his capacity as acting Administrator )  
of the U.S. Environmental Protection )  
Agency, U.S. ENVIRONMENTAL )  
PROTECTION AGENCY, and )  
REGION I of the U.S. )  
Environmental Protection Agency, )

Defendants. )

**UNOPPOSED MOTION FOR AMENDED ARGUMENT DATE  
REGARDING DEFENDANTS' MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 6(b), the Defendants respectfully move the Court for an amended oral argument date for the pending motion to dismiss. There is good cause for this motion for an amended argument date, and in support thereof the Defendants state as follows:

1. Plaintiff Dominion Energy Brayton Point, LLC, filed its Complaint on September 22, 2004, seeking an order instructing the Administrator of the U.S. Environmental Protection Agency ("EPA") to conduct an evidentiary hearing regarding the terms of a National Pollution Discharge Elimination System ("NPDES") permit for one of its electric generating facilities known as the Brayton Point Station.

2. Defendants EPA, the EPA Administrator, and EPA Region I filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), for lack of subject matter jurisdiction and for

failure to state a claim, on December 27, 2004. Plaintiff responded to that motion on January 12, 2005, and Defendants submitted a reply memorandum on March 18, 2005, pursuant to the Court's Order of March 10, 2005.

3. On March 23, 2005, the Court issued an Order setting oral argument on the Defendants' motion to dismiss for Monday, May 2, 2005, at 3:00 pm.

4. The Defendants respectfully request that the oral argument date be changed to a date as soon as possible on or after May 9, 2005, with the exception of May 13, 2005 and May 17-19, 2005. The change of date is requested because Department of Justice counsel will be out of the country between April 20, 2005, and May 1, 2005; the Assistant U.S. Attorney assigned to this case will be in trial during the week of May 2, 2005, in United States v. Buckley, Case No. 00-11632 (D. Mass.) (RWZ); and EPA counsel have scheduling conflicts that will prevent them from attending oral argument during the week of May 2, 2005, and during May 17-19, 2005. Plaintiff's counsel also has a scheduling conflict on May 13, 2005.

5. Defendants' counsel hereby certifies pursuant to Local Rule 70.1(a)(2) that the parties have conferred regarding this motion, and that the Plaintiff does not oppose the relief requested.

6. A proposed order is submitted herewith as Exhibit A.

WHEREFORE, the Defendants move the Court to amend its Order of March 10, 2005 to set the oral argument date for Defendants' motion to dismiss on May 9, 2005, or as soon as possible thereafter, with the exception of May 13, 2005, and May 17-19, 2005.

Respectfully submitted,

Dated: March 30, 2005

By:

  
HEATHER E. GANGE

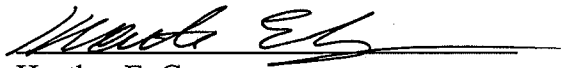
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PROTECTION AGENCY, and REGION I of the  
U.S. Environmental Protection Agency

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Unopposed Motion for Amended Argument Date Regarding Defendants' Motion to Dismiss and Memorandum in Support of Unopposed Motion for Amended Argument Date Regarding Defendants' Motion to Dismiss, were served this 30<sup>th</sup> day of March 2005, via first class mail, on counsel listed below:

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